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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/993,359  
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: Duncan F. BROWN  
Filed : November 19, 2001  
TC/A.U. : 3714  
Examiner : Corbett B. Coburn  
Docket No. : 2100/23  
Title : BUNCO GAMING DEVICE,  
METHOD AND BONUS GAME

Examiner: Corbett B. Coburn

Group Art Unit: 3714

### Appeal Brief

Mail Stop: Appeal Brief-Patents  
Commissioner for Patents  
Washington, D.C. 20231

Applicants appeal from the August 24, 2004 Final Rejection entered in the above-captioned application.

#### **(1) Real Party In Interest**

The real party in interest for the present application is Case Venture Management, LLC, 500 Skokie Boulevard, Suite 285, Northbrook, Illinois 60062, as shown in the assignment recorded in the United States Patent and Trademark Office ("USPTO") on February 25, 2002, at Reel 012620, Frame 0973.

#### **(2) Related Appeals And Interferences**

At this time, Applicants are not aware of any appeals and interferences that would relate to the present case.

### **(3) Status Of Claims**

The original application contained claims 1-116. Claims 1-108 and 116 were cancelled in response to an election requirement. At this time, claims 109-115 are pending and all stand rejected. Applicants appeal the rejection of claims 109-115.

### **(4) Status Of Amendments**

Applicants filed a response subsequent to the final rejection to which the Examiner responded with an Advisory Action on December 3, 2004.

### **(5) Summary Of The Invention On This Appeal**

Although various embodiments of the gaming machine, method and bonus game are shown throughout the specification and in the drawings, the summary will only refer to certain of the embodiments pertaining to the claims at issue. No waiver is intended for the embodiments that are not referred to herein.

Claim 109 encompasses one embodiment of a dice game having attributes of Bunco, wherein multiple bets are placed on different stages of the game (page 2, lines 16-17). The present Bunco-*type* embodiment is an ongoing game with stages that, as a result of the nature of the game, also involve multi-stage betting working with an evolving game. The present invention is directed to a Bunco-*type* video gaming machine that has a set of differing dice elements. A match point is randomly selected that has a respective match indicium. The dice are initially tossed and a determination is made as to whether any match is made between the match indicia and the dice tossed (page 5, ln. 28 – page 6, ln. 1).

At least one match comprises a winning condition for a stage being played, but if a match is not made, then the unmatched indicium is removed from further play (page 5, lns. 2-3). If a match is made, the next stage is played provided the player's wager included the next successive stage to be played. The game ends when no matches are made at a given stage, assuming that the wager was made up to and including that stage of play (page 6, lns. 4-5). If a match is not made, the game ends and the player loses all wagers placed on successive stages of play.

Figure 1 shows a video screen representation of a multi-stage Bunco-*type* dice gaming machine. We emphasize Bunco-*type* in italic because this is *not* a traditional Bunco game. This

significant difference is something the Examiner has continuously failed to appreciate. As shown, a maximum of seven stages or rolls of the game is provided.

FIG.1

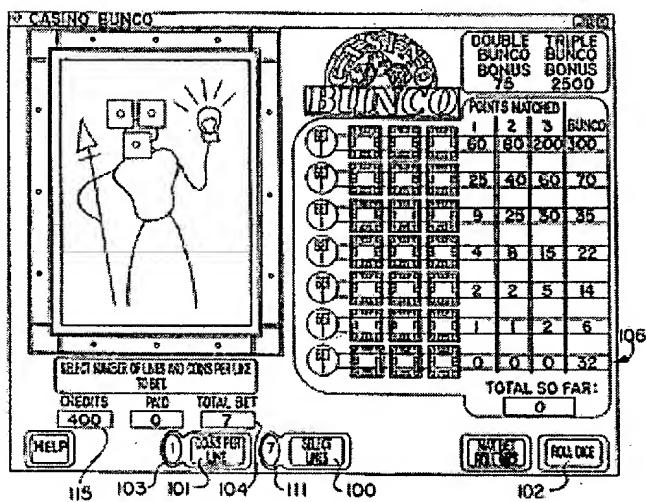
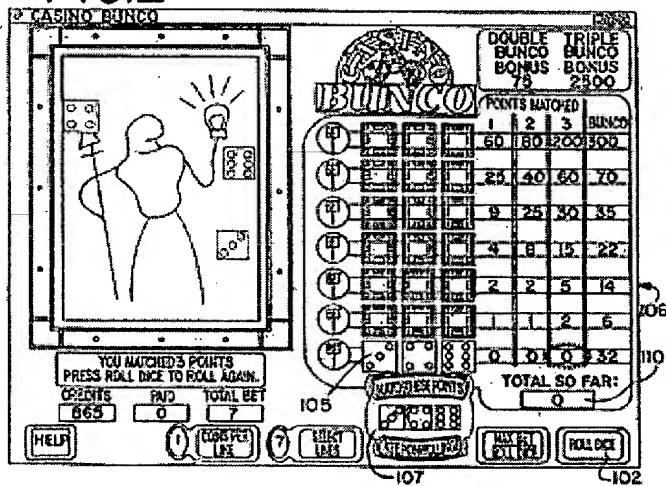
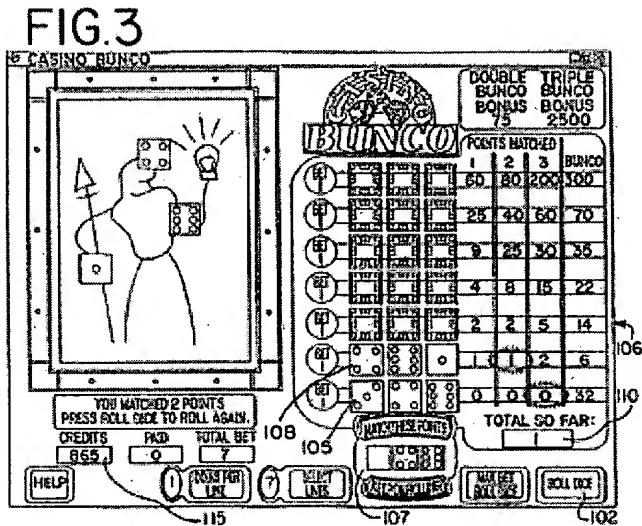


Figure 2 shows a game in progress after the first roll. Specifically, the roll of 3-4-6 is placed in the first stage area 105 next to the applicable line of the payable 106 for that stage (0,0,0,32). For each stage there are four payable values. These values are for rolling one, two or three points or for rolling "Bunco," which is achieved when all dice rolled match one number which is an active point.

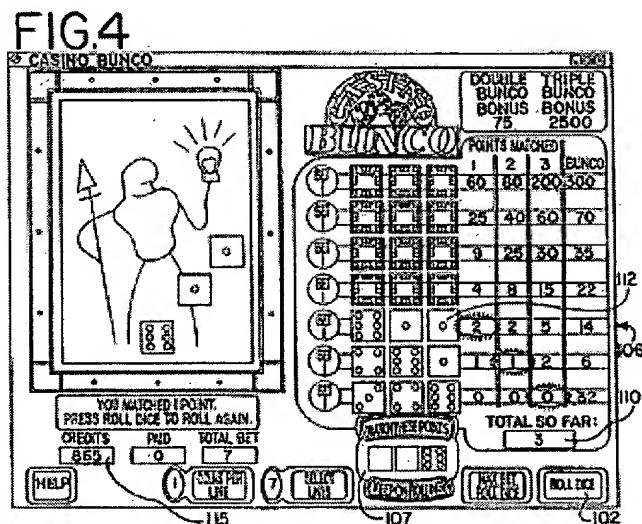
FIG.2



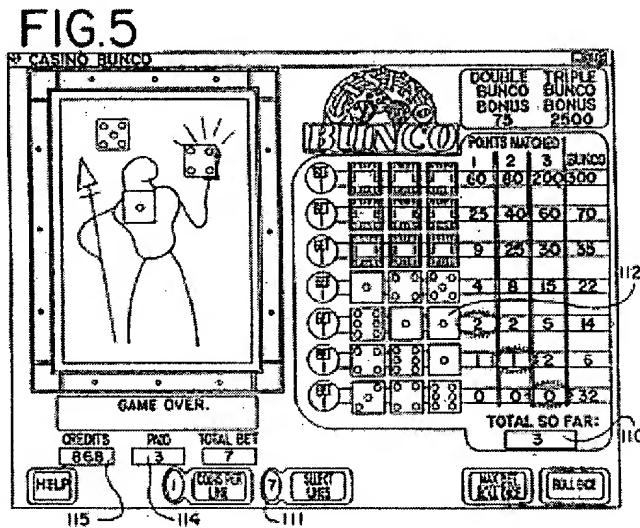
The player presses the “Roll Dice” button 102 for the second stage, and a possible result is shown in Figure 3.



The roll of 1-4-6 matches two of the three points that were established in the first roll. Thus, the points “4” and “6” remain “alive,” *i.e.*, in play 107. The point of “3” from the first roll is no longer alive because it does not appear in the second roll. The three dice are placed on the second stage line 108 next to the applicable payable 106 values for that stage. The player presses the “Roll Dice” button 102 for the third stage and a possible result is shown in Figure 4.



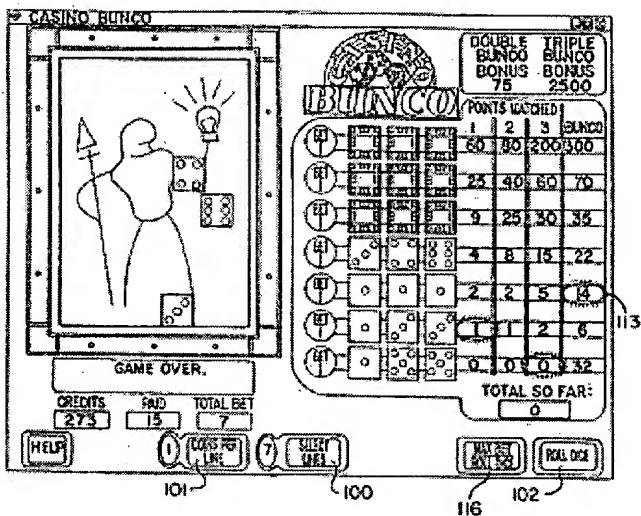
The roll of 1-1-6 matches one of the two points that were alive after the second roll. Thus, only the point "6" remains alive 107. The point of "4" from the first two rolls is no longer alive because it does not appear in the third roll. The three dice are placed on the third stage line 112 next to the payable values for that stage. The player then presses the "Roll Dice" button 102 for the fourth stage and a possible result is shown in Figure 5.



The roll of 1-4-5 does not match the point of "6," which was the only point left alive. While "4" was an active point after the first two rolls, the absence of a "4" on the third roll took it out of play as a point, and thus was of no value in the fourth roll. As a result of matching no points the game is over.

Figure 6 shows another Bunco-type game at its conclusion. The first roll of 1-5-5 established only two points as a result of the duplicate 5's. The second roll of 1-3-3 kept only the point of "1" alive. The third roll of 1-1-1 is "Bunco". The fourth roll of 3-4-6 does not match the point of "1", and thus ends the game.

FIG.6



Dependent claim 110 is directed to a bonus award embodiment wherein the bonus award value increases with each successive stage of play (page 8, lns. 12-19).

Dependent claim 111 is directed to embodiments where the number of dice elements is limited to three.

Dependent claim 112 is directed to embodiments with subsequent stages of play provided at least one match point remains for each subsequent stage.

Dependent claim 113 is directed to embodiments with a randomly allocated free advancement feature (page 8, ln. 24-page 9, ln. 3).

Dependent claim 114 is directed to embodiments with a randomly allocated free advancement feature along with elimination from play any match point that is not matched on a toss. Play continues provided that at least one match point remains for each successive stage.

Dependent claim 115 is directed to embodiments of match points with match indicium, wherein the match indicium is randomly selected. Some or all of the match indicia may thereby be the same (page 7, lns. 25-28).

**(6) Issues**

(a) The extent to which the Examiner erred in rejecting Claims 109-115 as obvious under 35 U.S.C. 103(a) over U.S. Patent No. 5,263,715 to Matsumoto (hereinafter “Matsumoto”) in light of U.S. Patent No. 2,125,236 to Edgeworth (hereinafter “Edgeworth”) and Bunco rules.

(b) The extent to which the Examiner erred in rejecting Claims 113 and 114 as obvious under 35 U.S.C. 103(a) over Matsumoto, Edgeworth, Bunco rules and further in view of U.S. Patent No. 5,647,798 to Falciglia (hereinafter “Falciglia”).

**(7) Grouping Of Claims**

For the rejection over Matsumoto in light of Edgeworth and Bunco rules, Claims 109-115 stand together.

For the rejection over Matsumoto in light of Edgeworth, Bunco rules and Falciglia, Claims 113 and 114 stand together.

**(8) Argument**

**(a) Matsumoto, Edgeworth And Bunco Rules Do Not Render Claims 109-115 Obvious**

The Examiner contends that Matsumoto teaches a dice game with a wager and a payout. The Examiner then alleges that Edgeworth teaches implementing Bunco on a slot machine. Finally, the Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Matsumoto in view of Edgeworth (and the rules of Bunco) to have implemented that described by the present invention.

It is clear that only through hindsight picking and choosing from the prior art, that the Examiner can reach the conclusion that Claims 109-115 are obvious. Even so, the rejection cannot be sustained for the following reasons.

**(i) Matsumoto Is A Machine Throwing Dice, And Nothing More**

Matsumoto discloses a dice displaying apparatus that includes a trackball to roll the dice. The trackball determines the die speed and rolling angles from the amount and direction of the trackball operation. The object of Matsumoto is to provide a pseudo-real feeling of “throwing dice”. As the Examiner accurately notes, Matsumoto does not teach Bunco or matching the indicium of each die element tossed with the match indicium of the match point. Further,

Matsumoto further fails to teach or suggest a game with successive stages to be played. Moreover, the invention of Matsumoto is an apparatus to determine die speed and rolling angles from the trackball operation during play of a game. Nowhere does Matsumoto even teach implementing a Bunco-*type* dice game on a video display device according to the present invention. Matsumoto has nothing to do with the invention claimed herein.

**(ii) The Examiner Erroneously Relied On Edgeworth, Which Teaches Away**

Edgeworth does not teach the elements that are not in Matsumoto, which would be necessary for a *prima facie* case to render Claims 109-115 obvious. The Examiner contends Edgeworth teaches implementing Bunco on a slot machine. Although the specification of Edgeworth mentions in passing that the invention may be adaptable to dice games such as “twenty six” and “Bunco” (col. 1, lns. 32-36), the present invention is quite simply not Bunco, but a Bunco-*type* dice game. Edgeworth does not disclose a Bunco-*type* dice game according to the present invention that includes a wager and payout on a video display device.

The apparatus of Edgeworth in fact teaches away from the present invention. Edgeworth discloses an apparatus including a turn-table, trap, feeler pins and dial device for manipulation of dice elements during play of a game. Ten dice are confined to an enclosure with a top circular opening arranged to rotate a turn-table or disc. After the dice have been tumbled, with a maximum of thirteen rolls, they are directed into a trap with feeler pins that registers the number of dice displaying a certain character.

The dial device tracks the number of cycles of the apparatus, such that a certain number of rolls is not exceeded. The object of Edgeworth is to accumulate twenty-six or more points in thirteen rolls by matching the character the player chose to the characters displayed on the dice after tumbled by the apparatus. If the player exceeds twenty-six points in thirteen rolls or less, the player merely wins.

Edgeworth does not teach a video display device including a wager and payout (according to a paytable) as claimed in the present invention. Nowhere does Edgeworth disclose a game with successive stages played as disclosed in the present invention. Moreover, Edgeworth is directed to an apparatus to tumble and manipulate the dice elements during play of a game.

Even if there was motivation to pick and choose from Edgeworth, Edgeworth does not teach the deficiencies of Matsumoto necessary to render Claims 109-115 obvious.

**(iii) The Present Invention Is Not Then Rendered Obvious In Light Of Traditional Bunco Rules**

The present invention is not just a Bunco game translated to a casino-game. Although the present invention has attributes of a Bunco game, it is not obvious in light of the traditional rules of Bunco. It is very different from the Rules of Bunco.

Bunco, sometimes called Bunko, Bonko or Bonco, is a dice game that dates back to the mid 1800's in the United States. While there are many variations that are currently played, what follows are what appear to be very popular rules of the game.

Bunco is typically played in groups of eight to twenty players. A group plays at multiple tables of four players. Players seated across from each other are partners although it is typical to change partners for each game played. Each table has three dice that are passed around from player to player.

The game is played in "rounds". The first round starts with all tables rolling for a "point" of *one*. The dice move clockwise to each person at the table who gets to roll the dice. A team scores one point for each die that matches the current point (one in this case). Each time one or more dice match the current point, the player's team scores and the player continues to roll. If the player gets all dice (typically three) to match on a number other than the current point then that team scores five points and the player continues to roll. If the player gets all three dice to match the current point they yell out "Bunco" and the team is awarded twenty-one points.

Once a player rolls the dice showing no points, the turn ends. Each round continues with the dice going from player to player around the table. The game ends when a player at the first or head table reaches twenty-one points. The players then change partners and rotate through the tables based on the winners and losers, and the next round would play with a "point" of *two*.

The current invention of this application consists of a dice game that is loosely based on an individual player's turn during a round of Bunco. While this game may be played in a casino with live dealers (as is done with the casino game of Craps) or on a gaming machine that propels real physical dice, the preferred embodiment is on a video gaming machine.

But unlike the version of Bunco described above, in this embodiment there may be up to three points which the player is trying to roll. Instead of being a single number, any number that

has been rolled on every stage of the current game is a match point. On the first roll, each number that appears on a die becomes a point, for a possible total of three points if all three dice are different (that is, all six possible numbers are points for the first roll). On the second roll, the player must roll one or more points matching the first roll to keep the game going. Any numbers that were rolled on both the first and second rolls remain points for the third roll. The player continues to roll until no dice match a number found in all previous rolls, or until the highest stage upon which a bet has been placed is rolled.

In further contrast, the present invention randomly selects a match point. Traditional Bunco is played in “rounds”. The first round starts with all tables rolling for a “point” of *one*. The second round starts with all tables rolling for a “point” of *two*. The “point” increases by one for each subsequent round, whereas the match point of the present invention may be randomly selected.

**(iv) It Should Therefore Be Clear That The Examiner Improperly Engaged in Hindsight Picking and Choosing**

When a rejection depends on a combination of prior art references, there must be some teaching, suggestion or motivation to combine the references. *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998). Matsumoto discussed above contains no reference whatsoever to matching the indicium of each die element tossed with the match indicium of the match point. Further, Matsumoto fails to teach or suggest a Bunco-*type* dice game on a video display device with a number of stages to be played.

Edgeworth and Bunco rules fail to satisfy the deficiencies of Matsumoto. In fact, Matsumoto and Edgeworth each teach away from use in a video display device, and do not teach the play of the inventive Bunco-*type* game as claimed. Matsumoto teaches a trackball that determines the die speed and rolling angles from the amount and direction of the trackball operation. Likewise, Edgeworth discloses an apparatus including a turn-table, trap, feeler pins and dial device for manipulation of dice elements during play of a game.

The combination of references fails to teach or suggest the claimed invention of a video display device and a program to match the randomly selected match point to the randomly selected indicia of the dice element, which also determines the payout.

The Examiner has used very disparate references, and takes only pieces of them which are then attempted to be put together to meet Claim 109; yet even so, those pieces do not add up to Claim 109. The combined teachings of the references cited would not suggest the present invention to one of ordinary skill the art.

Moreso, this prior art shows that Applicants are indeed the first to make a video gaming machine based upon a Bunco-*type* dice game. This alone shows unobviousness, since as the Examiner recounts, “Bunco is an extremely popular game and has been for over a century”. Yet no one but Applicants have adapted it to a video gaming machine in all that time, and a specialized game at that.

**(v) Structures That Are Not Found in the Prior Art**

It is also apparent that even when combined, Matsumoto, Edgeworth and Bunco rules do not disclose the following:

Claim 109 requires a “video display device” and “differing gameplay dice elements, including a subset of at least one match point” and “displaying a random toss of a plurality of dice elements at each stage of play”. Although the Examiner contends that this embodiment of the invention would have been obvious to one of ordinary skill in the art at the time of the invention, the Examiner ignored the attributes of the present invention that are not found in light of the traditional rules of Bunco. In the present invention there may be up to three points which the player is trying to roll. Instead of being a single number, any number that has been rolled on every stage of the current game is a match point. On the first roll, each number that appears on a die becomes a point. On the second roll, the player must roll one or more points matching the first roll to keep the game going. Any numbers that were rolled on both the first and second rolls remain points for the third roll. The player continues to roll until no dice match a number found in all previous rolls, or until the highest stage upon which a bet has been placed is rolled. In further contrast to traditional Bunco rules, the present invention randomly selects a match point, whereas traditional Bunco is played in “rounds” with the first round starting with a “point” of *one*, the second round starting with a “point” of *two*, etc.

Claims 110-111 both require a bonus award that increases with each successive stage of play and including the step of awarding a bonus award if all dice elements on a toss have the

same randomly selected indicium which also matches a match indicium. There is no showing this is present in the cited art.

Claim 112 further requires elimination from play any match point which is not matched on a toss, and determines whether to continue with a toss on a subsequent stage of play up to a preset maximum number of stages provided that at least one match point remains for each such subsequent stage. There is no showing this is present in the cited art.

Claim 113 further requires a randomly allocated free advancement feature. There is no showing this is present in the cited art.

Claim 114 further requires a randomly allocated free advancement feature, which any match point that is not matched on a toss is eliminated from play, and determines whether to continue with a toss on a subsequent stage of play up to a preset maximum number of stages provided that at least one match point remains for each such subsequent stage unless the free advancement feature has been allocated, in which event the game continues to the next stage of play. There is no showing this is present in the cited art.

Claim 115 further requires a plurality of match points where each of the plurality of match points have a match indicium selected at random, whereby some or all of the match indicia of the plurality of match points may thereby be the same. There is no showing this is present in the cited art.

In the absence of these elements, Matsumoto, Edgeworth and Bunco rules cannot render Claims 109-115 obvious.

**(b) Matsumoto, Edgeworth, Bunco Rules and Falciglia Do Not Render Claims 113 and 114 Obvious**

Claims 113 and 114 contain all the limitations of independent Claim 109. Since Claim 109 is allowable over the references cited for the reasons stated above, Claims 113 and 114 are also allowable since they depend from an allowable independent Claim, and therefore need not be further discussed as to patentable distinctions over the prior art, which they possess. Nonetheless, Claim 113 and 114 recite a free advancement feature, which is not shown in this art.

For the reasons stated above, the prior art rejections entered in this case are not well-founded, and therefore, the rejection to Claims 113 and 114 are, therefore, also improper.

**(c) Conclusion**

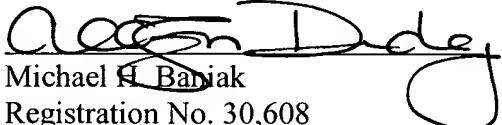
It should be now apparent that the Examiner's reliance on Matsumoto, Edgeworth and Bunco rules is misplaced. Neither Matsumoto nor Edgeworth nor Bunco rules teach, suggest or provide the motivation to be combined to arrive at the Applicants' invention. Numerous elements in the Applicants' claims cannot be found in any reference.

For at least the foregoing reasons, Applicants respectfully request that the Board reverse the final rejection entered by the Examiner and allow the pending claims.

Respectfully submitted,

April 19, 2005

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**(9) Appendix 1: Clean Copy Of The Claims Involved In The Appeal**

109. (Original) A gaming machine for playing a Bunco-type dice game comprising:

- a video display device;
- a cpu having a program operating a dice game;
- a wager input mechanism which registers a wager placed by a player;
- 5 said program establishing a set of differing gameplay dice elements, including a subset of at least one match point at the start of the game, each said match point having a match indicium for potential matching with a subsequent toss of the dice elements;
- said program establishing and displaying a random toss of a plurality of dice elements at 10 each stage of play, and determining for each die element tossed at a stage of play whether its randomly selected indicium matches said match indicium of said match point; and
- a payout mechanism providing an award according to a predetermined first payable for each match on a toss.

15 110. (Original) The gaming machine of claim 109 wherein said payout mechanism includes a second payable provided for a bonus award, said second payable increasing in bonus award value with each successive stage of play, and including the step of awarding a bonus award if all dice elements on a toss have the same randomly selected indicium which also matches a match indicium.

20 111. (Original) The gaming machine of claim 110 wherein three dice elements are established and displayed as being tossed at each stage of play.

112. (Original) The gaming machine of claim 109 wherein said program eliminates from play any match point which is not matched on a toss, and determines whether to continue with a toss on a subsequent stage of play up to a preset maximum number of stages provided that at least 25 one match point remains for each such subsequent stage.

113. (Original) The gaming machine of claim 109 wherein said program includes a randomly allocated free advancement feature, and determines a game ending condition if no match is made at a stage of play unless said free advancement feature has been allocated, in which event the game continues to the next stage of play.

30 114. (Original) The gaming machine of claim 109 wherein said program includes a randomly allocated free advancement feature, said program further eliminating from play any match point which is not matched on a toss, and determines whether to continue with a toss on a subsequent stage of play up to a preset maximum number of stages provided that at least one match point remains for each such subsequent stage unless said free advancement feature has been allocated, 35 in which event the game continues to the next stage of play.

115. (Original) The gaming machine of claim 109 wherein a plurality of match points are established, each of said plurality of match points having a match indicium selected at random, whereby some or all of said match indicia of said plurality of match points may thereby be the same.

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